

Decision 05-09-038 September 22, 2005

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Pacific Gas and Electric Company,
a California corporation, for a Permit To
Construct to Relocate the Existing Above Ground
Moraga-Claremont 115 kV Power Line Pursuant
to General Order 131-D.
(U 39 E).

Application 05-06-031
(Filed June 20, 2005)

OPINION GRANTING PERMIT TO CONSTRUCT POWER LINE

Summary

Pacific Gas and Electric Company (PG&E) is granted a permit to construct the Gateway Valley 115 kV Power Line Relocation Project. PG&E will relocate three existing, parallel 115 kV tower lines to accommodate construction of the Montanera Project, a proposed residential community in the City of Orinda. This proceeding is closed.

PG&E's Project

PG&E owns three 115 kV double-circuit power lines on steel open lattice towers within a single, 160-foot wide right of way that crosses the Montanera Project, a proposed residential community located in Gateway Valley, south of Highway 24 in the City of Orinda (Contra Costa County). Developer Orinda Gateway, LLC has asked PG&E to relocate approximately 1.1 miles of the three lines, which will require PG&E to construct approximately 1.61 miles of lines on a new route. The current facilities to be relocated include the Sobrante-Grizzly-

Claremont #1 and #2 115 kV Lines (both double-circuit lines), and the Moraga-Claremont #1 and #2 115 KV Lines (two single-circuit lines making up a double-circuit line). These lines run generally east from Claremont substation in Oakland to where they join a north-south route located to the east of the Montanera Project site in Orinda before connecting to PG&E's Moraga Substation. The easternmost 1.1 mile segment crossing the Montanera Project will be relocated. The relocated lines would extend approximately 1.61 miles from a location west of Orinda off Highway 24 near Gateway Exit and Upton Road to a location southeast of Orinda near the PG&E Moraga Substation. The relocated lines are expected to include approximately nine to ten lattice steel towers each (for a total of approximately 30 structures) with a typical height of 90 to 125 feet, and typical span lengths of approximately 450 feet to 1,500 feet. The relocated lines, like the existing power lines, would be aligned parallel as much as possible, with towers grouped together in sets of three to minimize visual impact, habitat impacts, and soil disturbances. PG&E provides a more complete description of the relocated lines in the application and accompanying exhibits.

Procedural Requirements

The Commission's General Order (G.O.) 131-D requires electric utilities to obtain Commission authorization in the form of a "permit to construct" before beginning construction of electric power line facilities such as those PG&E proposes here. G.O. 131-D, Sections IX.B, X, and XI, requires the utility to include in its request, among other things, a project description and map, reasons the route was selected, a listing of the government agencies having undertaken

review and their positions, a Proponent's Environmental Assessment or equivalent environmental information in accordance with CEQA,¹ and a description of measures to reduce the potential exposure to electric and magnetic fields; the utility also must meet various notice requirements. We have reviewed PG&E's application and find it complete and in compliance with the General Order.

No protests or responses to PG&E's application were filed.² The Commission did receive two letters to which PG&E filed a reply as though they were formal responses to the application. Neither objected to granting PG&E a permit to construct. Even though the letters did not qualify as "responses" under the Rules, PG&E's reply was accepted for filing in the interests of having a complete record. The letter from Wilmot McCutchen of Orinda asked for additional information regarding public exposure to EMF and public safety in case of a tower failure in an earthquake or landslide. PG&E responded by providing McCutchen with the requested information, but reports the letter actually concerned a different project unrelated to the subject of this application. The second letter was from the California Native Plant Society, East Bay Chapter, and submitted what it termed "comments for the scoping process." As PG&E

¹ California Environmental Quality Act (CEQA, Public Resources Code Section 21000 et seq.).

² A protest is a document objecting to the granting in whole or in part of the authority sought in the application, while a response is a document that does not object to the authority sought, but nevertheless presents information that the party tendering the response believes would be useful to the Commission in acting on the application. (Rules of Practice and Procedure, Rule 44). Protests and responses must be formally filed and meet the other requirements of Article 12, Protests and Responses to Applications, of the Rules.

notes in its response, the Society's comments seem to assume that CEQA efforts for the project are only beginning, not already completed. Nonetheless, PG&E provided further explanation of how native plant issues were thoroughly covered in its CEQA studies and in the federal and state agency permitting process, and provided appropriate references to the environmental and permitting documents where the Society's issues were addressed.

Under G.O. 131-D, Section IX.B.1.f, applications for a permit to construct power line facilities between 50 kV and 200 kV need not include a detailed analysis of purpose and necessity, a detailed estimate of cost and economic analysis, a detailed schedule, or a detailed description of construction methods, beyond that required for CEQA compliance. Thus, our primary concern here is the proposal's compliance with CEQA.

Environmental Review

Because the Commission must issue a discretionary decision without which PG&E's power line relocation cannot proceed, CEQA requires that the Commission consider the environmental consequences before acting upon or approving the project.³ The Commission must act as either a Lead or Responsible Agency under CEQA. The Lead Agency is the public agency with the greatest responsibility for supervising or approving the project as a whole.⁴ Here, PG&E's power line relocation is part of the much larger Montanera Project

³ CEQA Guidelines, Section 15050(b).

⁴ CEQA Guidelines, Section 15051(b).

for which environmental review has been completed.⁵ The City of Orinda is the lead agency under CEQA for Montanera Project; the Commission is a Responsible Agency.

As a Responsible Agency, the Commission must consider the Lead Agency's environmental documents and findings before acting upon or approving the project.⁶ The specific activities that must be conducted by a Responsible Agency are contained in the CEQA Guidelines, Section 15096. As further described below, the City of Orinda has completed its environmental review under CEQA, prepared the required Environmental Impact Report (EIR), and approved the Montanera Project.

The scope and details of the Montanera Project have changed several times over the years since it was first proposed, and with them the power line relocation component. The original Montanera Project was the subject of a 1992 Final EIR, a 1994 Final EIR Addendum, and a 1998 Supplemental EIR. For the current version of the Montanera Project, the City of Orinda prepared a Second Supplemental EIR (SSEIR) in 2004, incorporating the earlier documents by reference. The Draft SSEIR was distributed October 25, 2004 to the State Clearinghouse,⁷ various local, state, regional and federal districts and agencies,

⁵ Orinda describes Montanera Project as, "245 homes, a swim club, five community playfields, a community Art and Garden Center, and associated roads and infrastructure (including the re-routing of 115 kV powerlines), all on approximately 230 acres. The remainder of the project site will include open space/trail uses (782 acres) and be set aside for watershed/preserve use (an additional 500 acres)." (City of Orinda Notice of Determination, March 16, 2005).

⁶ CEQA Guidelines, Section 15050(b).

⁷ State Clearinghouse # 91103062. (Application Exhibit 4c).

property owners, interested groups and the public at large for a 45-day public comment period that closed on December 9, 2004. The City released the Final SSEIR in January 2005.

On February 15, 2005, the Orinda City Council certified the SSEIR and adopted a statement of findings and facts, a Statement of Overriding Considerations, and the Second Supplemental Mitigation Monitoring and Reporting Plan for Montanera Project.⁸ The City gave the Montanera Project its final approval on March 15, 2005 and filed its Notice of Determination with the State Clearinghouse the following day.⁹ The City's Notice of Determination made the following determinations: (1) The project will have a significant effect on the environment; (2) an EIR was prepared for the project pursuant to CEQA; (3) mitigation measures were made a condition of project approval; (4) a Statement of Overriding Considerations was adopted for the project; and (5) findings were made pursuant to CEQA.

We have reviewed the City's environmental documents, including the SSEIR, and find them adequate for our decision-making purposes. We limit our consideration here to the 115 kV power line relocation component of the project over which we exercise discretionary approval.

The SSEIR evaluated eight alternative power line routes, including the existing corridor, with emphasis on identifying the environmental impacts and construction feasibility. It describes the environmental setting and potential impacts, and offers a set of mitigation measures intended to reduce those impacts

⁸ Orinda City Council Resolution No. 13-05. (Application Exhibit 4b).

⁹ Application Exhibit 4a.

to below the level of significance where possible. The power line study identified impacts related to aquatic habitats, oak/bay forest and coyote scrub habitats, birds, and visual aspects. We summarize each below.

Potential aquatic habitat impacts relate to construction activities within, and substantial modification to, the bed, channel and banks of natural stream channels. The re-routed transmission line will cross a number of east-west running perennial and intermittent streams and has the potential of disturbing sensitive creek habitats. Construction activities may therefore fall within the stream bed regulatory jurisdiction of the California Department of Fish and Game. To mitigate the potential impacts to less-than-significant levels, the City will implement mitigation measures including consulting with Fish and Game and, if necessary, acquiring a Fish and Game Code Section 1603 Streambed Alteration Agreement, and application of the measures described in the Stormwater Management Plan. These latter measures are the result of consultation with the Regional Water Quality Control Board.

Potential impacts to non-riparian oak/bay forest and coyote scrub habitat include selective tree and scrub removal during construction and as part of ongoing project maintenance. The previous Supplemental EIR contains mitigation to reduce these impacts to a less-than-significant level. No additional mitigations were deemed necessary in the later SSEIR.

Potential bird impacts include bird collision and electrocution conditions that exist with all electrical transmission tower lines. The SSEIR found that the relocation of the power line would cause no significant new impact or substantial increase in severity of the existing impact. No new supplemental mitigation measures beyond those already incorporated into the current PG&E power line

structure design standards is required. The potential impact will be less than significant.

The City's Findings, Facts in Support of Findings, and Statement of Overriding Considerations¹⁰ contains statements pertaining to these impacts and mitigation measures, and findings for each impact, and categorizes each impact as being less than significant after mitigation. In contrast, the City found that visual mitigation measures would not fully reduce the relocated power lines' visual impacts to less-than-significant levels for those individuals viewing the hillside locations where the towers are to be located. While the visual impacts could be reduced by mitigation measures, they could not be reduced to less-than-significant levels, and thus would remain significant and unavoidable.

In the end, the City approved the Montanera Project after determining that its benefits will outweigh its unavoidable significant adverse environmental impacts, including the visual effects of PG&E's relocated power lines. In arriving at that conclusion, the City cited as benefits constituting an overriding consideration: (1) balanced development of the Gateway Valley as a residential development while preserving significant amounts of open space in perpetuity; (2) substantial, increased recreational opportunities (parks, an expanded trails system, and community playfields) for residents of Orinda and the surrounding region; (3) an Art and Garden Center that will offer educational, social and recreational opportunities; (4) aesthetically sensitive grading that conforms to the natural contours, ensures safety and preserves trees and other vegetation to the

¹⁰ Exhibit B to Orinda City Council Resolution 13-05. (Application Exhibit 4b).

greatest practical extent; and (5) preservation of the City's historic structures and sites, unique trees, and landforms.

After reviewing the SSEIR and mitigation plan, we find that with respect to those issues within the scope of our permitting process, the City of Orinda adopted mitigation measures intended to reduce the project's significant environmental impacts to less-than-significant levels where it was feasible to do so. We will adopt the City's findings and mitigations for our purposes here.

We find the City in its Statement of Overriding Considerations enumerated several significant benefits associated with the proposed project that appear to reasonably justify approval despite certain significant and unavoidable impacts. Therefore, we accept and adopt the findings of the City's Statement of Overriding Considerations.

We conclude that granting PG&E a permit to construct for its proposed Gateway Valley 115 kV Power Line Relocation Project is in the public interest and the application should be approved.

Category and Need for Hearings

The Commission in Resolution ALJ 176-3155 preliminarily categorized this as a ratesetting proceeding not expected to require hearings. There are no material facts in dispute, and there is no known opposition to granting the relief requested. We conclude that it is not necessary to disturb our preliminary determinations.

Waiver of Comment Period

This is an uncontested matter in which the decision grants the relief requested. Accordingly, the requirement for a 30-day period for public review and comment is waived as permitted by Pub. Util. Code Section 311(g)(2).

Assignment of Proceeding

John Bohn is the Assigned Commissioner and James C. McVicar is the assigned Administrative Law Judge in this proceeding.

Findings of Fact

1. PG&E's application is complete and in compliance with General Order 131-D.
2. PG&E's proposed power line relocation is part of the much larger Montanera Project.
3. The City of Orinda is the lead agency under CEQA for the Montanera Project, and the Commission is a Responsible Agency.
4. The City prepared an SSEIR finding that the Montanera Project would have a significant effect on the environment.
5. On February 15, 2005, the Orinda City Council certified the SSEIR and adopted a statement of findings and facts, a Statement of Overriding Considerations, and the Second Supplemental Mitigation Monitoring and Reporting Plan for the Montanera Project.
6. The City gave the Montanera Project its final approval on March 15, 2005 and filed a Notice of Determination with the State Clearinghouse the following day.
7. We have reviewed the City's environmental documents and find them adequate for our decision-making purposes as a Responsible Agency for the power line relocation component of the Montanera Project over which we exercise discretionary approval.
8. The mitigation measures the City has adopted will reduce all impacts associated with the power line relocation to less-than-significant levels, except visual impacts.

9. The City has adopted feasible mitigation measures to reduce adverse visual impacts of the power line relocation, but not to a less-than-significant level. The power line relocation will continue to have a significant and unavoidable adverse visual impact.

10. Consistent with the City's findings and determinations, we find the proposed power line relocation will have a significant effect on the environment.

11. The City has identified reasonable benefits of the Montanera Project that will outweigh its unavoidable significant adverse environmental impacts, including the adverse visual impact of PG&E's relocated power lines.

12. There is no known opposition to granting the authorization requested.

Conclusions of Law

1. As a Responsible Agency under CEQA, the Commission must review and consider the City's environmental documents in making its decision.

2. A public hearing is not necessary.

3. The requirement for a 30-day period for public review and comment should be waived as permitted by Pub. Util. Code Section 311(g)(2).

4. The Application should be granted as set forth in the following order.

5. This order should be made effective immediately to allow PG&E to move ahead on a schedule that will accommodate the Montanera Project's construction.

O R D E R

IT IS ORDERED that:

1. Pacific Gas and Electric Company (PG&E) is granted a permit to construct the Gateway Valley 115 kV Power Line Relocation Project described in Application 05-06-031 and this order.

2. We adopt the environmental findings and mitigation measures adopted by the City of Orinda related to the PG&E power line relocation component of the Montanera Project, and the City's Statement of Overriding Considerations, for purposes of our approval.

3. The requirement for a 30-day period for public review and comment is waived as permitted by Pub. Util. Code Section 311(g)(2).

4. Application 05-06-031 is closed.

This order is effective today.

Dated September 22, 2005, at San Francisco, California.

MICHAEL R. PEEVEY
President
GEOFFREY F. BROWN
SUSAN P. KENNEDY
DIAN M. GRUENEICH
JOHN A. BOHN
Commissioners